



EUROPEAN COMMISSION
RESEARCH EXECUTIVE AGENCY

Legal Affairs, Internal Control and Reporting
Head of Sector

Brussels, 17 DEC. 2018
REA C0.1

Mr Riccardo Coluccini

Italy

Sent by registered email to:
ask+request-6087-
6777c49b@asktheeu.org

Subject: Your application for access to documents on project iBorderCtrl (700626) - Ares(2018)5658252

Dear Mr Coluccini,

We refer to your request for access to documents submitted to the European Commission on 02/11/2018 via the website AskTheEU.org, reassigned to Research Executive Agency (REA) on 05/11/2018 and registered on 06/11/2018 under reference number Ares(2018)5658252. Further to this, we informed you on 26/11/2018 that an extension of the time limit within 15 working days was necessary in accordance with Article 7(3) of Regulation (EC) No 1049/2001 regarding public access to documents.

A. SCOPE OF YOUR REQUEST

In your application concerning the project iBorderCtrl (grant agreement nr. 700626) you request:

"All the deliverables listed in the 'Publication' section of the project iBorderCtrl, Project ID: 700626 Funded under: H2020-EU.3.7. - Secure societies - Protecting freedom and security of Europe and its citizens: <https://www.iborderctrl.eu/Publications>".

In the project website you mentioned the following deliverables appear under "Publications":

Project deliverables

- D1.1 Ethics advisor's first report
- D1.2 Ethics of profiling, the risk of stigmatization of individuals and mitigation plan
- D1.3 Ethics Advisor
- D2.1 Requirement Analysis Report
- D2.2 Reference Architecture and components specifications
- D2.3 EU wide legal and ethical review report
- D3.1 Data Collection Devices - specifications

D3.2 First version of all technological tools and subsystems (Portable unit, ADDS, DAAT, portable radar, FMT, Avatar based dialogue)
D3.3 Second version of all technological tools and subsystems for integration
D4.1 First version of the iBorderCtrl software platform
D4.2 Second version of the iBorderCtrl software platform
D5.1 Integration Plan
D5.2 Early version of the integrated prototype (limited functionality)
D6.1 Experimental Design for Pilot Deployment and Evaluation
D7.1 Project Web Portal
D7.2 Project flyer
D7.3 Dissemination and communication plan
D7.4 Early Business Plan
D7.6 Yearly communication report including communication material
D7.7 Project Flyer 2
D7.8 Dissemination and communication plan 2
D8.1 Quality Management Plan
D8.3 Periodic Progress Report
D8.4 Annual Report
D8.5 Periodic Progress Report 2
D8.7 Annual Report 2

This request is handled within the scope of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

B. DISCLOSURE OF THE REQUESTED DOCUMENTS

Having examined the documents requested under the provisions of Regulation (EC) N° 1049/2001 regarding public access to documents, we consider that the documents which are listed in Annex 1 are related to your request. In this Annex we specify the documents to be disclosed, partially disclosed or to which public access cannot be granted according to the exceptions provided in the above mentioned Regulation. The legal grounds for calling on these exceptions are detailed for each of the documents listed in the Annex 1 to this letter.

Concerning the exceptions to the right of access laid down in Articles 4(1) (b) and 4(2) first indent of Regulation (EC) No 1049/2001, namely the protection of privacy and the integrity of the individual, in particular in accordance with EU legislation regarding the protection of personal data, and the protection of commercial interests of a natural or legal person including intellectual property we recall the following:

Protection of privacy and integrity of the individual

The documents contain personal data of individuals which are not in the public domain. Pursuant to Article 4(1) (b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with EU legislation regarding the protection of personal data.

When access is requested to documents containing personal data Regulation (EC) No 45/2001 becomes fully applicable¹. Article 8 (b) of Regulation (EC) No 45/2001 stipulates that personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

We consider that, with the information provided in your request, the necessity of disclosing the personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the concerned individuals. In the present case, disclosure of the personal data of persons involved in the project in question would breach their right to privacy. It cannot therefore be assumed that such release would not prejudice their legitimate rights.

The exception laid down in Article 4(1) (b) of Regulation (EC) No 1049/2001, the protection of privacy and the integrity of the individual is an absolute exception that does not have to be balanced against the public interest in disclosure.

Protection of commercial interests of natural and legal persons

The requested documents contain sensitive commercial information of the entities participating in the project consortium or of other applicants to the call not in the public domain. These documents contain, in particular, the reference to the project consortium intellectual property (background, existing and/or foreseen foreground), knowhow, methodologies, technologies, potential inventions working modalities, budget, strengths and weaknesses of the project, success of their implementation, etc.

Pursuant to Article 4(2) first indent of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property.

We consider that the above-mentioned sensitive commercial information has commercial value for the entities participating in the project. In our view, releasing this information into public domain would give the competitors of the consortium an unfair advantage, as the competitors would be able to use this sensitive commercial information in their favour. Competitors would be able to anticipate the consortium strategies and weaknesses. This would, in turn, adversely affect the competitive position of the consortium on the market and, thus, seriously undermine their commercial interest, including their intellectual property.

Therefore, the exception laid down in Article 4(2) first indent of Regulation (EC) No 1049/2001 applies to the requested documents.

Such exception applies, unless there is an overriding public interest in disclosure of the requested documents. Such an interest must, first, be a public interest and secondly, outweigh the harm caused

¹ Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, *Commission v. The Bavarian Lager Co. Ltd.* ECR 2010 I-06055.

by disclosure. In your application you did not bring forward any argument to justify the existence of an overriding public interest in releasing the requested document. In this instance, we have found no elements that could indicate the existence of such an overriding public interest in the sense the Regulation (EC) No 1049/2001 that would outweigh the need to protect the interests identified in this reply.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Director of the REA to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to Mr Marc TACHELET, Director of the REA, at the following address:

Research Executive Agency
Covent Garden building
COV2 – 18/136
Place Charles Rogier, 16
1210 Brussels

Yours sincerely,

A handwritten signature in black ink, consisting of a long horizontal stroke with a stylized 'B' or 'K' shape in the center.

Barbara KAMPIS

Enclosure: Annex 1 - List of documents related to the request and legal grounds regarding disclosure
Deliverables: D.3.1, D.3.2, D.3.3, D.7.2 and D.7.7.

Annex I

Internal number	Project	Document title	Document type (email, deliverable, reports, etc)	Date of the document	Registration number	Status of the access to the document
1	iBorderCtrl (700626)	D1.1 GEN - Requirement No. 7	Deliverable	01-03-2018	Ares(2018)1158682	Not accessible on the basis of Article 4.1 (b) of REGULATION (EC) No 1049/2001 to protect privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data and of Article 4.2 1st indent of REGULATION (EC) No 1049/2001: protection of commercial interests of a natural or legal person, including intellectual property
2	iBorderCtrl (700626)	D1.2 OEI - Requirement No. 2	Deliverable	05-07-2017	Ares(2017)3380351	Not accessible on the basis of Article 4.1 (b) of REGULATION (EC) No 1049/2001 to protect privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data and of Article 4.2 1st indent of REGULATION (EC) No 1049/2001: protection of commercial interests of a natural or legal person, including intellectual property
3	iBorderCtrl (700626)	D1.3 GEN - Requirement No. 1	Deliverable	08-12-2016	Ares(2016)6858897	Not accessible on the basis of Article 4.1 (b) of REGULATION (EC) No 1049/2001 to protect privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data and of Article 4.2 1st indent of REGULATION (EC) No 1049/2001: protection of commercial interests of a natural or legal person, including intellectual property
4	iBorderCtrl (700626)	D2.1 Requirement Analysis Report	Deliverable	29-12-2016	Ares(2016)7194947	Not accessible on the basis of Article 4.1 (b) of REGULATION (EC) No 1049/2001 to protect privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data and of Article 4.2 1st indent of REGULATION (EC) No 1049/2001: protection of commercial interests of a natural or legal person, including intellectual property
5	iBorderCtrl (700626)	D2.2 Reference Architecture and components specifications	Deliverable	30-05-2017	Ares(2017)2715049	Not accessible on the basis of Article 4.2 1st indent of REGULATION (EC) No 1049/2001: protection of commercial interests of a natural or legal person, including intellectual property
6	iBorderCtrl (700626)	D2.3 EU wide legal and ethical review report	Deliverable	12-05-2017	Ares(2017)2429505	Not accessible on the basis of Article 4.1 (b) of REGULATION (EC) No 1049/2001 to protect privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data and of Article 4.2 1st indent of REGULATION (EC) No 1049/2001: protection of commercial interests of a natural or legal person, including intellectual property
7	iBorderCtrl (700626)	D3.1 Data Collection Devices - specifications	Deliverable	20-12-2017	Ares(2017)6295321	Partial disclosure on the basis of Article 4.2 1st indent of REGULATION (EC) No 1049/2001: protection of commercial interests of a natural or legal person, including intellectual property
8	iBorderCtrl (700626)	D3.2 First version of all technological tools and subsystems (Portable unit, ADDS, DAAT, portable radar, FMT, Avatar based dialogue)	Deliverable	28-02-2018	Ares(2018)1137157	Partial disclosure on the basis of Article 4.2 1st indent of REGULATION (EC) No 1049/2001: protection of commercial interests of a natural or legal person, including intellectual property

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Internal number	Project	Document title	Document type (email, deliverable, reports, etc)	Date of the document	Registration number	Status of the access to the document
9	iBorderCtrl (700626)	D3.3 Second version of all technological tools and subsystems for integration (Portable unit, ADDS, DAAT, portable radar, FMT, Avatar based dialogue)	Deliverable	15-10-2018	Ares(2018)5273032	Partial disclosure on the basis of Article 4.2 1st indent of REGULATION (EC) No 1049/2001: protection of commercial interests of a natural or legal person, including intellectual property
10	iBorderCtrl (700626)	D4.1 First version of the iBorderCtrl software platform	Deliverable	01-03-2018	Ares(2018)1167484	Not accessible on the basis of Article 4.2 1st indent of REGULATION (EC) No 1049/2001: protection of commercial interests of a natural or legal person, including intellectual property
11	iBorderCtrl (700626)	D4.2 Second version of the iBorderCtrl software platform	Deliverable	08-10-2018	Ares(2018)5158682	Not accessible on the basis of Article 4.2 1st indent of REGULATION (EC) No 1049/2001: protection of commercial interests of a natural or legal person, including intellectual property
12	iBorderCtrl (700626)	D5.1 Integration plan	Deliverable	16-05-2018	Ares(2018)2540125	Not accessible on the basis of Article 4.2 1st indent of REGULATION (EC) No 1049/2001: protection of commercial interests of a natural or legal person, including intellectual property
13	iBorderCtrl (700626)	D5.2 Early version of the integrated prototype (limited functionality)	Deliverable	09-10-2018	Ares(2018)5178280	Not accessible on the basis of Article 4.2 1st indent of REGULATION (EC) No 1049/2001: protection of commercial interests of a natural or legal person, including intellectual property
14	iBorderCtrl (700626)	D6.1 Experimental Design for Pilot Deployment and Evaluation	Deliverable	29-10-2018	Ares(2018)5528272	Not accessible on the basis of Article 4.2 1st indent of REGULATION (EC) No 1049/2001: protection of commercial interests of a natural or legal person, including intellectual property
15	iBorderCtrl (700626)	D7.1 Project Web Portal	Deliverable	NA	NA	Full access: directly accessible: Web Portal available in https://www.iborderctrl.eu/
16	iBorderCtrl (700626)	D7.2 Project flyer	Deliverable	20-10-2016	Ares(2016)6025748	Full access
17	iBorderCtrl (700626)	D7.3 Dissemination and communication plan	Deliverable	26-09-2017	Ares(2017)4690395	Not accessible on the basis of Article 4.2 1st indent of REGULATION (EC) No 1049/2001: protection of commercial interests of a natural or legal person, including intellectual property
18	iBorderCtrl (700626)	D7.4 Early Business Plan	Deliverable	24-10-2017	Ares(2017)5195563	Not accessible on the basis of Article 4.2 1st indent of REGULATION (EC) No 1049/2001: protection of commercial interests of a natural or legal person, including intellectual property
19	iBorderCtrl (700626)	D7.6 Yearly communication report including communication material	Deliverable	NA	NA	Full access: directly accessible: Web Portal available in https://www.iborderctrl.eu/
20	iBorderCtrl (700626)	D7.7 Project Flyer 2	Deliverable	18-05-2018	Ares(2018)2595300	Full access
21	iBorderCtrl (700626)	D7.8 Dissemination and communication plan 2	Deliverable	01-10-2018	Ares(2018)5019050	Not accessible on the basis of Article 4.2 1st indent of REGULATION (EC) No 1049/2001: protection of commercial interests of a natural or legal person, including intellectual property
22	iBorderCtrl (700626)	D8.1 Quality Management Plan	Deliverable	21-11-2016	Ares(2016)6527933	Not accessible on the basis of Article 4.2 1st indent of REGULATION (EC) No 1049/2001: protection of commercial interests of a natural or legal person, including intellectual property
23	iBorderCtrl (700626)	D8.3 Periodic Progress Report	Deliverable	06-04-2017	Ares(2017)1837924	Not accessible on the basis of Article 4.2 1st indent of REGULATION (EC) No 1049/2001: protection of commercial interests of a natural or legal person, including intellectual property

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Internal number	Project	Document title	Document type (email, deliverable, reports, etc)	Date of the document	Registration number	Status of the access to the document
24	iBorderCtrl (700626)	D8.4 Annual Report	Deliverable	12-10-2017	Ares(2017)4989525	Not accessible on the basis of Article 4.2 1st indent of REGULATION (EC) No 1049/2001: protection of commercial interests of a natural or legal person, including intellectual property
25	iBorderCtrl (700626)	D8.5 Periodic Progress Report 2	Deliverable	09-03-2018	Ares(2018)1313324	Not accessible on the basis of Article 4.2 1st indent of REGULATION (EC) No 1049/2001: protection of commercial interests of a natural or legal person, including intellectual property
26	iBorderCtrl (700626)	D8.7 Annual Report 2	Deliverable	11-10-2018	Ares(2018)5223502	Not accessible on the basis of Article 4.2 1st indent of REGULATION (EC) No 1049/2001: protection of commercial interests of a natural or legal person, including intellectual property

